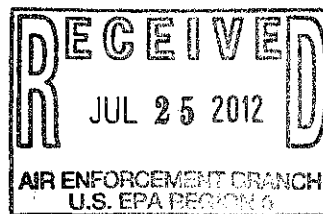




TECHNICAL SOLUTIONS  
NORTH AMERICA



July 23, 2012

Ms. Eileen L. Furey  
Acting Chief  
Air Enforcement and Compliance Assurance Branch  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Blvd  
Chicago, IL 60604-3590

RE: Veolia ES Technical Solutions, L.L.C.  
Sauget, IL  
Comprehensive Performance Testing

Dear Ms. Furey,

I am in receipt of your July 5, 2012, letter explaining EPA's rationale for determining the date of Veolia's next required CPT. I understand EPA's rationale, but believe the rationale is based on some confusion which, in part, I may have caused by inadvertently using the phrase "data-in-lieu" in my June 14, 2012 correspondence to you.

I realize that you were not personally involved in the negotiations regarding Veolia's Title V Permit, so please allow me to review those negotiations with you. In mid-2008, the Director of the Air and Radiation Division had concerns about the existing metals testing data available for Veolia. She expressed those concerns to Veolia and her desire for an additional round of metals testing prior to the issuance of the Title V Permit. Veolia had cost concerns about performing the metals testing because Veolia believed such testing was not yet required by the regulations and, in order to meet the Director's request, the timing of such testing would need to be expedited at significant expense to Veolia. After a period of negotiations, EPA and Veolia ultimately reached an agreement whereby Veolia would perform the expedited metals testing at the Director's request and EPA would in turn—so long as the testing was properly conducted and the results were acceptable—allow the results of the expedited metals testing to be used for compliance with the next required CPT.<sup>1</sup> This agreement ensured that Veolia would not experience any long term negative financial effect as a result of providing the EPA with an additional round of metal data prior to their issuance of the Title V permit. I encourage you to review and discuss this specific agreement with the Director that was most involved in the negotiations.

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<sup>1</sup> Under the EPA-Veolia agreement, and pursuant to the applicable regulations, Veolia's CPT Plan was due in October of 2008, with the actual CPT testing to be commenced in October of 2009. Veolia submitted its CPT Plan on time in October of 2008; however, EPA subsequently granted Veolia an extension to perform the actual CPT testing, which was ultimately commenced in December of 2009.



Further, the Director memorialized the EPA-Veolia agreement in an attachment to a Request for Information dated June 5, 2008. Paragraph 13 of the attachment specifically set forth the EPA-Veolia agreement that allowed Veolia to use the expedited metals testing data for the next required CPT:

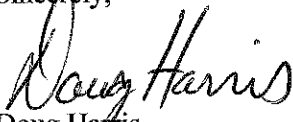
13. Provided that the results of these performance tests result in data that meet quality assurance objectives such that the results demonstrate compliance with the applicable standards, are sufficient to establish the applicable OPLs under 40 C.F.R. § 63.1209, and meet all requirements of 40 C.F.R. § 63.1207 for conducting comprehensive performance tests (CPT), *these performance tests will serve as the mercury, SVM, and LVM portion of the CPT required between October 14, 2008, the compliance date for the standards set forth in 40 C.F.R. § 63.1219 (a) and (c), and October 14, 2009, the date by which Veolia is otherwise required to conduct a CPT on each incinerator.*

As set forth above, Veolia never intended to offer—and did not offer—the results of the expedited metals testing as “data in lieu”; instead, the agreement contemplated that the results of the expedited metals testing would serve as the metals portion of the CPT testing itself. Moreover, it appears that the 1999 Hazardous Waste Combustor MACT Rule does not even contemplate using “data-in-lieu” for only a portion of the CPT; rather, under the rule, once the decision is made to use “data-in-lieu,” it must be used to meet all of the CPT requirements. See 64 Fed. Reg. 52,828, 52,917-18 (Sept. 30, 1999). Thus, Veolia did not even have the option to use “data-in-lieu” for only a portion of the CPT. Veolia, did however, pursuant to its agreement with the EPA, use the actual results of the expedited metals testing for a portion of the CPT commenced in December of 2009.

In fact, all subsequent necessary confirmatory performance testing has been scheduled and based upon a CPT commencement date of December of 2009. For example, Veolia submitted its confirmatory test plan on April 13, 2012; the plan was approved on May 25, 2012; and Veolia concluded testing pursuant to the plan on June 27, 2012. This schedule is consistent both with the EPA-Veolia Agreement and the applicable regulations for performing CPTs. Therefore, as was correctly stated in my June 14, 2012 correspondence to you, Veolia continues to believe that its next CPT must be commenced in December of 2014, with a CPT Plan due to the EPA in December of 2013.

It has always been and will continue to be, as it was in 2008, Veolia’s top priority to work with the EPA to reach satisfactory resolution on all issues. In that spirit, Veolia requests a meeting with the EPA at its earliest convenience to attempt to resolve this issue. I will contact Sarah Marshall or Shannon Downey to schedule this meeting.

Sincerely,

  
Doug Harris  
General Manager

Cc:Ray Pilapil, Manager  
Compliance and Systems Management Section  
Bureau of Air, Illinois Environmental Protection Agency